



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0910; FRL-10564-02-R9]

#### Determination to Defer Sanctions; California; El Dorado County Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final determination.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an interim final determination that the State of California has submitted a rule that satisfies the requirements of title I, part D of the Clean Air Act (CAA or “Act”) permitting program for areas under the jurisdiction of the El Dorado County Air Quality Management District (EDCAQMD or “District”). This determination is based on a proposed approval, published elsewhere in this *Federal Register*, of a District rule addressing these requirements. The effect of this interim final determination is to defer the imposition of sanctions that were triggered by a previous EPA action that included a limited disapproval of a District rule intended to address title I, Part D requirements.

**DATES:** This interim final determination is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, comments will be accepted until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0910 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio,

video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Camille Cassar, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105; by phone: (415) -947-4164; or by email to

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**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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### **I. Background**

On February 2, 2000, the EPA issued a final limited approval and limited disapproval action addressing certain revisions to the District portion of the California State Implementation Plan (SIP) (“2000 NSR action”).<sup>1</sup> The 2000 NSR Action addressed the District’s permitting program for the issuance of New Source Review (NSR) permits for stationary sources, including

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<sup>1</sup> 65 FR 4887 (Feb. 2, 2000).

review and permitting of major and minor sources under the Act. In the 2000 NSR Action, we determined that while the District's SIP revision submittal strengthened the California SIP, District Rule 523, adopted by the District on April 26, 1994, did not fully meet the requirements for Nonattainment NSR (NNSR) permitting programs for major sources under title I, part D, of the Act. Accordingly, the 2000 NSR Action included a limited disapproval under title I, part D, of the Act, relating to NNSR program requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this limited disapproval action started a sanctions clock for imposition of offset sanctions and highway sanctions.

On December 7, 2021, the District adopted Rule 523-1, and on March 9, 2022, the California Air Resources Board submitted Rule 523-1 to the EPA for approval into the El Dorado County portion of the California SIP ("2022 NSR Submittal"). Rule 523-1 was intended to address all currently applicable NNSR program requirements under title I, part D of the Act, including all the provisions necessary to correct the deficiencies with the District's NNSR program that formed the basis for the EPA's limited disapproval in the 2000 NSR action. In the Proposed Rules section of this ***Federal Register***, we have proposed approval of the District's 2022 NSR submittal. Based on this proposed approval action, we are also taking this final rulemaking action, effective upon publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by the EPA's February 2, 2000 limited disapproval of the District's NNSR permitting program, because we believe that the 2022 NSR Submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment, as described in this final determination and in our proposed approval of the District's 2022 NSR Submittal, with respect to the deficiencies identified as the basis for our limited approval in the 2000 NSR Action, we will take final action proposing to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks

triggered by our 2000 NSR Action will be permanently terminated on the effective date of our final approval of the 2022 NSR Submittal.

## **II. EPA Action**

We are making an interim final determination to defer CAA section 179 sanctions associated with our February 2, 2000 limited disapproval of the District's NNSR permitting program. This determination is based on our concurrent proposal to fully approve the District's 2022 NSR submittal, which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that the District's 2022 NSR Submittal addresses the deficiencies identified in the February 2, 2000 limited disapproval action and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the District's submittal and, through its proposed action, is indicating that it is more likely than not that it corrects the deficiencies that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while we complete our rulemaking process on the approvability of the District's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

### **III. Statutory and Executive Order Reviews**

This action defers sanctions and imposes no additional requirements.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action defers sanctions and imposes no new requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action defers sanctions and imposes no new requirements.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action defers sanctions and imposes no new requirements. In addition, this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has

demonstrated that a tribe has jurisdiction. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations, and/or

Indigenous peoples. This action defers sanctions in accordance with CAA regulatory provisions and imposes no additional requirements.

Although this action does not concern human health or environmental conditions, the EPA identifies and addresses environmental justice concerns by promoting meaningful involvement in this action through providing the public with an opportunity to comment on this deferral of sanctions as well as the opportunity to comment on our proposed approval of the District's 2022 NSR submittal in the Proposed Rules section of this ***Federal Register***.

#### K. Congressional Review Act (CRA)

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the EPA Administrator of this action does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: March 24, 2023.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

[FR Doc. 2023-06562 Filed: 3/30/2023 8:45 am; Publication Date: 3/31/2023]